IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

WP(C).No. 30742 of 2006(I)

PETITIONERS:

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1. **DR.S.JAYAKUMARI,W/O.R.RAVEENDRAN PILLAI, AGED 54 YEARS,LECTURER,(SEL.GRADE),MAHATMA GANDHI COLLEGE,TRIVANDRUM,RESIDING AT.F.26,MARUTHANADU, PILLAI VEEDU NAGAR, KESAVADASAPURAM,TRIVANDRUM-695 004.**

2. **DR.S.SATHY DEVI,W/O.LATE K.JAYAKUMAR, AGED 54 YEARS,LECTURER (SEL.GRDAE),DEPARTMENT OF HINDI,N.S.S.COLLEGE FOR WOMEN,NEERAMANKARA, THIRUVANANTHAPURAM,RESIDING AT.SREE RAJA RAJESWARI, HOUSE NO.C.21, SREE DEVI NAGAR,KARAMANA,TRIVANDRUM.**

3. **N.VIJAYAKUMAR,S/O.T.NAGAPPAN NAIR, AGED 55 YEARS,LECTURER(SEL.GRADE), DEPARTMENT OF RUSSIAN,MAHATMA GANDHI COLLEGE, TRIVANDRUM,RESIDING AT PARVATHI,M.P.S.F-6, MANGARWALKONAM LANE,WEST PATTOM, THIRUVANANTHAPUAM -695 004.**

4. **P.JAYASREE,W/O.G.DEVANAND, LECTURER(SEL.GRADE),DEPARTMENT OF ECONOMICS, N.S.S.COLLEGE FOR WOMEN,NEERAMANKARA, THIRUVANANTHAPURAM,RESIDING AT NARAYANA, EDAGRAMAM,KARAMANA P.O., TRIVANDRUM-695 002.**

BY ADV. SRI.K.RAMAKUMAR,
SRI.P.NARENDRAN.

RESPONDENTS:

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1. **THE SECRETARY TO MINISTRY OF HUMAN RESOURCES DEVELOPMENT DEPARTMENT, DEPARTMENT OF EDUCATION, GOVERNMENT OF INDIA, NEW DELHI.**

W.P.(C). NO.30742/2006:

2. THE STATE OF KERALA,
REP. BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE PRINCIPAL SECRETARY,
DEPARTMENT OF HIGHER EDUCATION,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

4. THE UNIVERSITY OF KERALA,
REP. BY THE REGISTRAR, THIRUVANANTHAPURAM.

5. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.

6. THE SECRETARY,
N.S.S.COLLEGES CENTRAL COMMITTEE,
PERUNNA, CHENGANASSERY.

BY ADV. SRI.M.RAJAGOPALAN NAIR, SC, KERALA UTY.
SRI.RAJESH NAIR, CGC
SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.P.GOPAL
GOVERNMENT PLEADER SMT M.R. SEELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/03/2007,ALONG WITH W.P.(C). NO. 31126/2006 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.30742/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. F.1-22/97-U.1 DTD. 27/07/1998 ISSUED BY R.1.

EXT.P.2: COPY OF THE REGULATION FRAMED BY THE U.G.C.

EXT.P.3: COPY OF THE G.O.P. NO. 171/99/H. EDN. DTD. 21/12/1999 ISSUED BY THE GOVERNMENT OF KERALA.

//TRUE COPY//

prv.

K.M.JOSEPH, J.

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WP.(C) Nos.30742, 31126 & 32879/06 &
3248, 4884, 4973, 6488, 7017, 7650,
7958, 9048, 9414 & 9712/2007.

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Dated this the 23rd day of March, 2007

JUDGMENT

I would think that this is essentially a case of old wine in a new bottle. Petitioners are all teachers working in Private Colleges affiliated to the Universities in State of Kerala. They are faced with compelled retirement on superannuation at the age 55 by virtue of the various provisions of the University Statute read with Rule 60(c) of Part I of K.S.R. They have approached this court primarily armed with the provisions of UGC Scheme of the year 1998, wherein the age of retirement of teachers is fixed as 62. The Clause in question reads as follows:

> "**16.0.0. SUPERANNUATION AND RE-EMPLOYMENT OF TEACHERS**
>
> 16.1.0. Teachers will retire at the age of 62. However, it is open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years."

2. They further rely on Clause 5 of Ext.P2 covering letter, which again reads as follows:

> "5.0. The University Grants Commission expects that the entire scheme of revision of pay scales, together with all the conditions attached to it, would be implemented by the State Governments as a composite scheme without any modifications, except the date of implementation and the scales of pay as indicated in Government of India notification No.F.1-22/97-U.I. Dated 27.7.98, 22.9.98 and 6.11.98. It shall be necessary for the Universities and the management of colleges to make the necessary changes in their statutes, ordinances, rules, regulations etc. to incorporate the provisions of this scheme."

3. I heard the counsel appearing for the petitioners, learned counsel for the UGC and the learned Government Pleader.

4. Learned counsel for the petitioners would submit that having regard to the provisions of UGC Notification produced as Ext.P2 in W.P.(C) 7958 of 2007, the matter is crystal clear. They would submit that it is in the nature of a regulation traceable to Section 26 of the UGC Act. It is pointed out that being a Central enactment apparently

traceable of Entry 66 of list 1 of 7th Schedule to the Constitution, in view of Article 254 of the Constitution any repugnancy between a State law and Central enactment can only result in the Central enactment prevailing over the State law. Reliance is placed on the decision reported in **Prof. Yashpal v. State of Chhattisgarh** ((2005) 5 SCC 420) in this regard. Sri. K.Ramakumar would submit that there cannot be any doubt that the authority must be treated as the UGC in view of Ext.P2 dated 24.12.1998. Counsel would point out that having regard to the nature of post held there can be no warrant for providing for an earlier retirement age than 62 by any State Government. It is pointed out that in several States Government have acted in conformity with the stipulation as to the age of retirement provided in the UGC.

5. Sri. Anil K. Narendran appearing for the petitioners in one of the cases would point out the Faculty Improvement Programme. He would submit that earlier the age limit was 45. The present age limit for undergoing the course is 50 and 53 for men and women respectively. He would submit that this effectively means that a teacher who is selected for the FIP and undergoes the programme

which consists of M.Phil or Ph.D consisting of three years and returns armed with superior qualification is totally deprived of the opportunity to impart education with the newly acquired skills to the student community. Equally the members of the student community are denied of the benefit of higher learning imbibed by the teachers in question. Sri. Anil K. Narendran also took me through Ext.P2, which is the report prepared under the Chairmanship of Sri. S.Radhakrishnan, wherein it is stated as follows:

> "**Age of Retirement**- The age of retirement in the case of public servant is determined on such considerations as the expectation of life of this class of people, the nature of their work and the retention of physical and mental capacity needed for its proper performance. Now university teachers as a class belong to the longest lived group in any community and the reasons are that they have a more disciplined life, and live in more congenial surroundings. They are not exposed to the same physical and nervous strains as may others are, and on the whole they enjoy more equable condition of existence. Even though their physical rigour may decline the intellectual capacity may remain unimpaired. Thus in the case of

> teachers age may not be a disability, for experience enriches the mind and maturity of knowledge ripens into wisdom. In some western countries the university teacher is not allowed to retire till he attains the age of 65 or 70, but hygienic and climatic conditions are more favourable there then they are in India. We therefore recommend that the ordinary superannuation age for all teachers should be sixty, but a Professor- provided he is in good health, should be allowed to serve till 64; No extension, however, should be for more than 2 years at a time."

He would therefore point out that it has been all along felt that as far as members of the teaching faculty are concerned, their retirement age can be fixed at the age above 55 years which is now again fixed in Ext.P2 as 62 years.

6. Sri. Gopalakrishnan Nair placed reliance on the decision of the Apex Court in **Prof. Yashpal's Case (supra).**

7. Sri. Kaleeswaram Raj would point out that the matter is essentially governed even as of now by terms of Rule 60C Part I KSR. Rule 60C was incorporated a long time back. So also the Statute governing the age of retirement under the concerned University Acts.

He would point out that though this court has rendered decisions in matters of this nature, this pointed question as to whether the Statute needs a fresh look and amendment in the light of the retirement age fixed under the UGC Act was not pointedly considered by the earlier decisions.

8. Sri. S. Krishnamoorthy, learned counsel appearing on behalf of the UGC, which has infact filed a counter affidavit in W.P.(C) 31126/2006 takes the following stand: He submits that as far as Colleges directly run by the UGC, indeed there is a statutory regulation fixing the age of retirement at 62. According to him what is produced as Ext.P2 dated 24.12.1998 is not a statutory regulation traceable to Section 26 of the Act. He relied on the notification dated 4.4.2000, which is referred to in the counter affidavit to contend for the position that even Ext.P2 dated 24.12.1998 stands superseded by subsequent notification dated 4.4.2000. He submits that in the notification dated 4.4.2000, which should govern the situation in respect of persons like the petitioners, there is no stipulation as to the age of retirement at all. In other words, the stand of the UGC with reference on whose stand the

very case of the petitioners is essentially based is that there is no age of retirement statutorily fixed, as far as petitioners are concerned, by the UGC.

9. Countering this stand Sri.P.Ramakrishnan would submit that it may not be correct to say that Ext.P2 dated 24.12.1998 has been superseded in its entirety by the Notification dated 4.4.2000. He would submit that a perusal of Section 26(d), 26(e) and 26(f) would show that notification dated 24.12.1998 is a comprehensive notification traceable to provisions under Section 26(e) and 26(f) also. A perusal of the notification dated 4.4.2000 would show that it does not cover all the matters embraced by Ext.P2 dated 24.12.1998, he submits.

10. Sri. Bechu Kuran Thomas would rely on Articles 38 and 39A of the Constitution of India. They read as follows:

> "**38. State to secure a social order for the promotion of welfare of the people.-** (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

> (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."
>
> "**39A. Equal justice and free legal aid.-**The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

He would submit that in fact there is discrimination practiced in so far as private college teachers in the State are discriminated as they have to retire at the age of 55 as their counterparts in the other States retire at a later age.

11. Sri. Santhosh Mathew relied on Clause 5 in the covering letter appended to Ext.P2 already referred to by me besides observation in **George v. State of Kerala** (1992(1) K.L.T. 793), which I shall refer to later.

12. Government Pleader of the State, which has filed a counter affidavit sought to justify the matter with reference to the decisions of this court. She would submit that this is essentially a matter of policy of the Government and there is no obligation on the part of the State to implement lock stock and barrel the scheme of the UGC. It is open to the State to consider various relevant aspects including promotion of the employment and the need to inject it in fresh blood.

13. I am of the view that the matters which are sought to be agitated by the petitioners in these writ petitions are no longer res integra. The very same question according to me has received judicial attention in a catena of decisions. They include the decisions reported in **George v. State of Kerala** (1992(1) KLT 793), **Dr. N.Gopalakrishnan v. State of Kerala** (2000(3) ILR Ker. 48), and **T.K.Balachandran v. State of Kerala** (2002(3) Lab. and Industrial Cases 2348).

14. I may refer to the decision in **N.Gopalakrishnan's Case**. In fact it is the very same exhibit which is relied on by the petitioners

which came up for consideration in the said case. In paragraph 3 of the said judgment reference is placed on the very same Clause 5, which is relied on the petitioners in this case as their sheet anchor. It is very clear that the petitioners therein also relied on the same as is evident from the following sentence:

> "By way of elaboration it was stated that the only aspect where the State Government could have a role to play would be the date of implementation and the scales of pay and nothing beyond it."

Reference is made to earlier case law and it is observed as follows at paragraph 6.

> "The UGC Scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the University to follow the same. Therefore the State Government has a discretion either to accept or not to accept the scheme. Where the State Government in its discretion decides to accept the Scheme subject to a condition, namely in so far as the age of superannuation is concerned, they are free not to accept the other stipulations like fixation of higher pay provided in the Scheme. When the State Government accepts the Scheme

> in the modified form the teachers can only get benefits which flows from the Scheme to the extent to which it has been accepted by the State Government and concerned Universities. A similar view expressed by a Division Bench of this Court in Writ Appeal No.223 of 1991 was affirmed by the Apex Court in George's Case."

15. In **T.K.Balachandran's Case** another Division Bench of this court proceeded to consider the matter. Therein the argument based on Entry 66 List 1 of the 7th Schedule was squarely met and the court found as follows:

> "What emerges from the above discussion is that whether the State legislation encroaches upon Entry 66 of the Union list or is repugnant to the law made by the Centre under Entry 25 of the concurrent list will have to be determined by the examination of two laws and will depend upon the facts of each case. Nothing prevents the State Legislature from laying different standards or qualifications from those laid down by the Centre. When State Legislature does so it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law. We therefore, hold that the University Statute fixing age limit of 55 for superannuation for private

> college teachers by the State Legislature would not encroach upon Entry 66 of Union list. On examining the Kerala University Act and the Statutes made thereunder and taking note of the fact that there is uniformity in the matter of age of retirement of private college teachers as well as government colleges in the State and the difference in the matter of appointment in various colleges with that of the University teachers, we are not prepared to say that fixation of age of superannuation as 55 as far as private college teachers is in any way inconsistent with or would go contrary to the U.G.C. Act and the Scheme."

In arriving at the said decision, it can be seen that the court has considered the case law emanating from the Apex court culminating in **University Grants Commission v. Sadhana Chaudhary** ((1996)10 SCC 536). In fact the judgment also shows that the teachers of private colleges have been agitating the same matter again and again as is evident from the following passage:

> "Undaunted by the failure, private college teachers again came up before this court with identical prayers."

Therefore I would think that there is little merit in the contentions taken by the petitioners, as they are essentially matters covered by

judgments of this court as already referred to. However, I feel that I should notice and deal with the arguments taken by the petitioners. The very premise of the argument of the petitioners is that there is a statutory regulation under Section 26 of the Act. They point out Ext.P2 dated 24.12.1998 as the statutory regulation. A perusal of Ext.P2 would show that it is a notification of a scheme. A perusal of the notification would show that the UGC contemplated bringing out a regulation and ultimately the actual regulation came only in the form of regulation dated 4.4.2000. In other words there is only Ext.P2 notification. If that be so, the entire argument of the petitioners would fail. Further it is to be noticed that Clause 5 of the covering letter essentially is addressed to the Government pointing out that it is expected of the Government that it would follow the entire scheme except those matters which are mentioned therein. As held by this court it is only when the State Government accepts it in such form with or without modification, with or without condition and incorporates it in the respective statute of the concerned State Government that the employee will get the benefit of the same. I have already found that the

notification dated 24.12.1998 was not a statutory regulation as such. I respectfully agree with the reasoning adopted by the Division Bench decisions. In matters of this nature, much as an individual Judge may be tempted to translate his individual predilections into what is law, he should be restrained by the constraints of judicial deference having regard to the four corners within which the court can interfere with matters of policy. It is not as if I fail to notice merit in some of the complaints of the petitioners as echoed in the report of the Commission appointed by the UGC relied on by Sri.Anil K.Narendran. Petitioners relied on the decision reported in **George v. State of Kerala** (1992(1) K.L.T. 793), wherein the Apex Court held as follows:

> "Although the appeals and the writ petitions, in our view, cannot succeed, we do feel that age of retirement fixed at 55 years in the case of teachers of affiliated colleges is too low. It is only after a teacher acquires several years of teaching experience that he really becomes adept at his job and it is unfortunate if the students have to lose the benefit of his experience by reason of an unduly early age of retirement. However, it is not for the Court to prescribe the correct age of retirement but that is a policy

> function requiring considerable expertise which can properly be done by the State Government or the State Legislature or the Universities concerned. We hope that some time in near future, the State Government will be able to consider the question and determine the age of retirement as it best thinks fit."

But I cannot also overlook the fact that the very same matter engaged the attention of this court later on as already referred to by me.

16. In fact the contention of the learned counsel for the petitioners that it will actually promote the financial interest of the State also if the retirement age is raised cannot be said to be without appeal. But, the ultimate authority to decide, as held by this court, is the State Government. I feel that I must hazard the expression of a view in the context of the facts of this case. Judicial notice can be taken of the fact that the lions share of the State's revenue is taken up for the payment of salaries and debt servicing. The outstanding debt of the State runs into thousands of crores. The amount that is set apart for capital expenditure is very low. In such a scenario I cannot entirely disagree with the potency of the contention of the petitioners that

Government would be able to shore up its scarce public finance if actually it raised the age of retirement. Of course these are all matters where it is for the Government to decide and it may not be open to this court to sit in judgment over the wisdom of a policy as distinct from the legality of the policy on well settled grounds of review of policy making. As regards the contention of Sri.Bechu Kurian Thomas based on Articles 38 and 39A apart from the fact that they constitute directive principles which no doubt is fundamental in the governance of the State, I would think that it may not be possible to draw support from those salutary provisions in the context of the facts of this case. Article 39A provides for the duty of the State to provide free legal aid by suitable legislation and to see that the operation of the legal system provides justice. Provisions of Article 38(2) relied on by the learned counsel Sri. Bechu Kurian Thomas is regarding the injunction to the State to strive to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. It is to be noted that none of the private college teachers in the State of Kerala retire at a different age. All the private college teachers in the State of

Kerala are apparently alike in the matter of age of retirement. So also the invocation of Article 14 in the context of the facts of this case may not be apposite. Equally reliance placed on the decision in **Prof. Yashpal's Case** in the context of the contention based on Article 254 is misplaced. The theory of repugnancy has been considered by the learned Judges in the judgments referred to by me already. This court has considered the question in the context of Entry 66 in which context the contention based on repugnancy can probably be raised. The decision in **Prof. Yashpal's Case** does not bring about a change in the law as such. I would not think that the said decision thus can be of any assistance.

17. The argument of Sri. Anil K.Narendran based on FIP programme cannot be said to be without appeal in the context of the need to impart the quality education to the students apart from employing the higher skills imbibed by the teachers on successful completion of FIP programme. But it is essentially for the State to consider the matter.

Having regard to the aforesaid discussion, I am constrained to

come to the conclusion that the petitioners have not made out a case for interference in the matter and accordingly the writ petitions are to be dismissed. They are dismissed. But I make it clear that the dismissal of these writ petitions will not stand in the way obviously in the State revisiting the issue of retirement age and taking such decision as it considers appropriate.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.